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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,261	08/20/2003	Ilya Yampolsky	BSI-540US	4665

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/643,261	Applicant(s) YAMPOLSKY ET AL.	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/03, 1/05, 1/06</u> | 6) <input type="checkbox"/> Other: ____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Vrba (6,168,621). Vrba, in col. 3, lines 10-11, for example, discloses a substantially self-expandable first section 32 or 34 and a balloon-expandable second section 30 which is inherently capable of being deployed in a receiving stent. The balloon-expandable second section is inherently less compressible than the self-expandable first section since balloon-expandable stents are more rigid and less resilient than self-expandable stents. Alternatively, it would have been obvious that the balloon-expandable second section is less

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compressible than the self-expandable first section for this reason.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vrba (6,168,621) in view of Pavcnik et al. (6,325,819). As to claim 15, Vrba fails to disclose the balloon-expandable section being constructed of stainless steel. However, Pavcnik et al. teach that a balloon-expandable stent should be constructed of stainless steel (col. 5, lines 30-32) apparently in order to obtain the advantage of making the stent strong. It would have been obvious to use stainless steel as the material for the Vrba balloon-expandable section so that it too would have this advantage. As to claim 16, Vrba fails to disclose a vessel engagement member. However, Pavcnik et al. teach that a stent should include vessel engagement members (barbs) in order to obtain the advantage of anchoring the stent in the vascular wall (col. 6, lines 57-59). It would have been obvious to include vessel engagement members (barbs) in the Vrba stent so that it too would have this advantage. As to claim 17, Vrba fails to disclose a graft cover. However, Pavcnik et al. teach that a stent should include a graft cover in order to obtain the advantage of blocking blood flow through the wall of the stent (col. 5, lines 13-21). It would have been obvious to

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include a graft cover on the Vrba stent so that it too would have this advantage.

Claims 1, 5-7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vrba (6,168,621) in view of Swanick et al. (2003/0114923). Vrba, in col. 3, lines 10-11, discloses a trunk region 30 having balloon-expandable second section and a self-expanding branch (e.g. 32). Vrba fails to disclose the trunk region as having a self-expanding section. However, Swanick et al. teach that the diameter of the legs 34, 36 of a vascular prosthesis can differ (lines 7-9 of [0029]) apparently in order to obtain the advantage of more closely matching the diameters of blood vessels. It would have been obvious to make branch (e.g. 34) of Vrba larger in diameter as compared to branch 32 so that it too would have this advantage. With this modification, the members 30 and 34 of Vrba together may be considered to be a "trunk region" since this region is larger in diameter along its entire length as compared to the branch 32. Thus, the Vrba trunk region would include a self-expanding section (the enlarged member 34) as claimed. As to claim 6, Vrba fails to disclose a crimping member. However, it is old and well known in this art to use crimping members to secure prosthesis sections together since they provide a strong

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attachment. It would have been obvious to include a crimping member in the Vrba stent so that too would have this advantage.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vrba (6,168,621) in view of Swanick et al. (2003/0114923) as applied to claim 1 above, and further in view of Cardon et al. (5,383,892). Vrba fails to disclose the balloon-expandable section as including a plurality of interconnected members and fails to disclose the self-expanding section a being braided. However, Vrba teaches that the parts of the stent may be formed in accordance with any of the known stents (col. 2, lines 2-6). Further, Cardon et al. teach that a balloon-expandable section 1 should include a plurality of interconnected members and that a self-expanding section 2 (noting that this section is self expanding as indicated in col. 1, lines 45-47) should be braided. It would have been obvious to so construct the Vrba balloon-expandable section and self-expanding section for this reason.

Claims 8, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vrba (6,168,621) in view of Swanick et al. (2003/0114923) as applied to claim 1 above, and further in view of Pavcnik et al. (6,325,819). As to claim 8, Vrba fails to disclose the balloon-expandable section being constructed of stainless steel. However, Pavcnik et al. teach that a balloon-

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expandable stent should be constructed of stainless steel (col. 5, lines 30-32) apparently in order to obtain the advantage of making the stent strong. It would have been obvious to use stainless steel as the material for the Vrba balloon-expandable section so that it too would have this advantage. As to claim 11, Vrba fails to disclose a vessel engagement member. However, Pavcnik et al. teach that a stent should include vessel engagement members (barbs) in order to obtain the advantage of anchoring the stent in the vascular wall (col. 6, lines 57-59). It would have been obvious to include vessel engagement members (barbs) in the Vrba stent so that it too would have this advantage. As to claim 12, Vrba fails to disclose a graft cover. However, Pavcnik et al. teach that a stent should include a graft cover in order to obtain the advantage of blocking blood flow through the wall of the stent (col. 5, lines 13-21). It would have been obvious to include a graft cover on the Vrba stent so that it too would have this advantage.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht
8/31/06



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731